that the said bank is now holding the land as trustee in favour of "SKCWK", and despite the plaintiffs' written request, the defendants have failed or omitted to get the bank as their trustee to execute a registrable lease in favour of the plaintiffs for the remainder of the 20 years period. Instead, "SKCWK" has issued a notice dated September 19, 1974 purporting to increase unilaterally the monthly rental of the lease from $2,800 to $4,000 in contravention of the terms of the 1966 agreement. In that notice, they also indicated that the plaintiffs would have to quit and deliver vacant possession of the demised premises on or before October 30, 1974 upon failure to pay the increased rent. The defence have denied all these allegations in their pleadings, affidavits and submission. They maintain that the 1966 lease agreement is not enforceable and null and void for non-registration by virtue of section 222 of the National Land Code. It is argued that when the lease commenced on August 15, 1965 "SKCWK" did not have any registered interest in the land although it might have an equitable interest, and as such the subject-matter of the contract was not in existence when the agreement was made — thus, rendering the agreement unenforceable. The defendants also maintain that the Malayan Banking Berhad is now the registered owner of the land and is not holding it as their trustee, and that there is no provision in the agreement whereby the defendants are bound to get a third party to grant a registrable lease in favour of the plaintiffs. Based on the authority of *Lee Ah Low* v. *Cheong Lap Keen & Anor.*,[1] it is contended that as the plaintiffs have failed to register their interest when they had opportunity to do so, only a monthly tenancy has been created although the agreement is bad in law. In the event, the plaintiffs are said to be occupying the premises as a monthly tenant and that they are now holding over under sufferance. Their unilateral action in increasing the monthly rent and the notice to quit are therefore valid.

In the course of his submission, Mr. Bernatt has in effect admitted that "SKCWK" might have had an equitable interest in the land when the lease agreement was executed, and as such I find it difficult to conceive how the plaintiffs can be held to be without any equitable remedy. Further, in view of the defendants' denial that Malayan Banking is merely holding the land as their trustee, it is not clear whether they have any legal right to issue the notice to quit in the first instance. However, without going into the merits of the arguments and counter-arguments by both counsel, it cannot be denied that the plaintiffs have been in occupation of the demised premises since August 15, 1965. The defendants by their conduct have allowed the plaintiffs to carry on hotel business at the demised premises on the understanding that the lease would extend for a period of 20 years. Having regard to the nature of the business and the conduct of the parties, in my view, the interim injunction should continue until the final determination of the various issues raised in the pleadings. Irreparable damages would be caused to the plaintiffs if the interim injunction is dissolved before the final disposal of the plaintiffs' claim and the defendants' counterclaim. Whereas, should the plaintiffs fail in their claim, the defendants can always be satisfactorily compensated in damages. In the premise, I find this is a proper case where the *status quo* should be maintained until the plaintiffs' claim for perpetual injunction or specific performance is disposed off. The defendants' application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Baharuddin, Bernatt, Tan & Ker; Allen & Gledhill.*

BAN GUAN SENDIRIAN BERHAD v. UNITED MALAYSIAN STEEL MILLS BERHAD

[O.C.J. (Wan Suleiman F.J.) October 23, 1975]

[Kuala Lumpur — Summons In Chambers in Civil Suit No. 79 of 1974]

Practice & Procedure — Alleged contract — Repudiation of it by defendants — Defence of fraud and counterclaim — Plaintiffs' application to strike out counterclaim — Whether counterclaim frivolous and vexatious.

Practice & Procedure — Pleading — Rules of — Whether counterclaim frivolous and vexatious — R.S.C. 1957, O. 25 r. 4.

The plaintiffs alleged that on or about December 12, 1972, the plaintiffs and the defendants entered into an agreement whereby the plaintiffs agreed to purchase 30,000 tons of steel bars in accordance with a price list and to be delivered by amounts of approximately 1,000 tons per month commencing from 1973. The plaintiffs alleged that on November 12, 1973, the defendants repudiated the contract and denied its existence. The defendants, instead, alleged that the plaintiffs had committed the tort of conspiracy, the effect of which was to make static the price of steel bars to be supplied to the plaintiffs for a period of at least 39 months, thereby causing loss to the defendants. The defendants also counterclaimed *inter alia* for a declaration that the alleged agreement was invalid and unenforceable and for rescission of the contract.

The plaintiffs applied for an order that the defendants' counterclaim be struck out on the grounds that it was frivolous, vexatious and disclosed no reasonable cause of action.

Held, dismissing the plaintiffs' application: on the pleadings there were undoubtedly triable issues both of fact and law.

Case referred to:-

(1) *Crofter Hand Woven Harris Tweed Co. Ltd.* v. *Veitch* [1942] A.C. 435, 440.

CIVIL SUIT.

S.D.K. Peddie for the applicants/plaintiffs.

Koh Wee Kiat for the defendants.

Wan Suleiman F.J.: This is an application by way of summons-in-chambers by the plaintiffs for an order that the counterclaim filed by the defendants be struck out on the grounds that it is frivolous, vexatious and discloses no reasonable cause of action.

To support his application, Mr. Peddie relies solely on the pleadings.

In the statement of claim the plaintiffs/applicants who are the plaintiffs in Civil Suit No. 79 of 1974 allege that on or about December 12, 1972 the plaintiffs and the defendants entered into an agreement whereby the plaintiffs agreed to purchase 30,000 tons of steel bars in accordance with a price list dated July 15, 1971 and to be delivered by amounts of approxi-

mately 1000 tons per month commencing from September 1973 subject to 2 months' notice in advance from the plaintiffs for detailed requirements of size and quantity.

The plaintiffs/applicants went on to allege that their first attempt to obtain performance of the contract failed and on 12th of November 1973 the defendants through their solicitors repudiated the contract and denied its existence.

They also alleged that in consequence they suffered damage and therefore prayed for damages and loss of profits continuing and costs.

The defence was a denial that the defendant company had made the alleged or any agreement with the plaintiff company. The defendants then averred: —

(Paragraph 2 of Statement of Defence) — "In the first alternative, the alleged agreement was entered into by one Lim Tuck Fatt, purportedly on behalf of the defendant company but in fact outside the scope of his authority."

(Paragraph 3 of Statement of Defence) — "In the second alternative, the alleged agreement is void on the ground that one Lim Foo Yong, as the then Managing Director of the defendant company has failed to declare his interests in the alleged agreement as he was under duty so to do by Article 104 of the Defendant Company's Articles of Association."

In paragraph 4 of the statement of defence, the defendants averred that the alleged agreement was to defraud the defendant company as well as the shareholders of the defendant company and to cause each of them loss, giving particulars of the fraud.

In paragraph 5 they alleged that the plaintiff company and certain named persons wrongly conspired among themselves with intent to injure, *inter alia*, the defendant company and its shareholders, and in paragraph 6 they further averred that if there was the alleged or any agreement it was a forged document done after the sale to the said Peh Kong Wan of 1,250,000 shares in the defendant company, and therefore they maintained that the alleged agreement was unenforceable and void being unlawful.

In counterclaiming the defendants then repeated their averment in paragraphs 4, 5 and 6 of their statement of defence. In short, they alleged that the plaintiffs had committed the tort of conspiracy, the effect of which was to make static the price of steel bars to be supplied to the plaintiffs for a period of at least 39 months, thereby causing loss to defendants, and gave as particulars of damage the sum of $7,800,000. The defendants counterclaimed, *inter alia*, for:

"(a) Against the plaintiff company declaration that the alleged agreement was invalid and unenforceable against defendant company;

(b) Against the plaintiff company, rescission of the alleged agreement;

(c) Against the plaintiff company, the said Lim Foo Yong, the said Lim Ooi Beng and the said Lim Tuck Fatt under paragraphs 4, 6, and 12 hereof, damages;

(d) Against the plaintiff company, the said Lim Foo Yong, the said Lim Ooi Beng and the said Lim Tuck Fatt under paragraph 5 hereof, damages for unlawful conspiracy to injure the defendant company;"

Clearly if defendants can prove that there had been such a conspiracy then there is a right of action, for if, in the words of Viscount Simon L.C. in *Crofter Hand Woven Harris Tweed Co. Ltd.* v. *Veitch*[1] "... as the result of such unlawful combination and misdemeanour, a private person receives a private injury, that gives such person a right of action."

It will suffice for me to cite a very pertinent passage from *Mallal's* Supreme Court Practice. Under Order 25 rule 4 under the heading "Striking Out a Pleading" the learned author said: —

"It is only in plain and obvious cases that recourse should be had to the summary procedure under this rule, for example, where the statement of claim discloses no cause of action. Thus in *Prince* v. *Gregory*, [1959] 1 All E.R. 133; [1959] 1 W.L.R. 177, a statement of claim which disclosed no cause of action in so far as it affected the second defendant was struck out. As to the question whether a plaint discloses a cause of action, it was held in *Peek* v. *Russell* (1923), 4 F.M.S.L.R. 32, C.A., that the plaint and its documents alone should be considered and all the allegations in it should be assumed to be true. If there is a point of law which requires serious discussion, an objection should be taken on the pleadings, and the point set down for argument under r. 2. *Low Yat* v. *Grace* [1947] M.L.J. 115, *Cadam & Ors.* v. *Beaver-brook Newspapers Ltd.* [1959] 1 Q.B. 413; [1959] 1 All E.R. 453; [1959] 2 W.L.R. 324, C.A. If there is an issue to be tried it can only be tried by the pursuing its normal course and being heard in open Court. *Low Yat* v. *Grace, supra.*"

I am satisfied that on the pleadings there are undoubtedly triable issues both of fact and of law.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Mah-Kok & Din.*

THE COLLECTOR OF LAND REVENUE, KOTA BHARU v. YUSOFF BIN YUNUS

[O.C.J. (Mohamed Zahir J.) March 27, 1977]
[Kota Bharu — Land Office File No. KES/KB 8771]

Land Law — Sale of land — Procedure at sale — National Land Code, s. 265(3)(c).

Practice and Procedure — Proceedings in chambers — Application under National Land Code, s. 265(3)(c) — Parties — Function of Collector — R.S.C. 1957, O. 54 r. 1.

Under section 265(3)(c) of the National Land Code it is the duty of the chargee to file the summons. It will be sufficient for the Collector to issue a certificate of reference to the court and deliver it to the chargee, if requested by the chargee. The certificate shall contain the particulars of the land and the reasons of the unsuccessful sale.

ORIGINATING SUMMONS.

Parties not represented.

Mohamed Zahir J.: The Collector of Land Revenue, Kota Bharu referred the above matter to this court by sending up the relevant Land Office file No. KES/KB 8771 addressed to Tuan Pendaftar Kanan, Mahkamah Tinggi Malaya, Kota Bharu with the following note on the cover:

"Diangkat untuk tindakan tuan selanjutnya dibawah Sec. 265(3)(b) K.T.N.

Sgd.
Pemungut Hasil Tanah,
Kota Bharu. 14/3/77."

Enclosed in the file is an affidavit sworn by one Ibrahim bin Ismail, Assistant Collector of Land Revenue, Kota